

By: Ellis

S.B. No. 1823

A BILL TO BE ENTITLED

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AN ACT

relating to representation of applicants for writs of habeas corpus in cases involving the death penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2, Article 11.071, Code of Criminal Procedure, is amended by amending Subsections (c) and (d) and adding Subsection (g) to read as follows:

(c) At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint competent counsel, unless the applicant elects to proceed pro se or is represented by retained counsel. Counsel appointed under this subsection may include counsel appointed to assist an attorney appointed as lead counsel under this section. On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(d) The court of criminal appeals shall adopt rules for the appointment of attorneys as counsel under this article [~~section~~] and the convicting court may appoint an attorney as counsel under this article [~~section~~] only if the appointment is approved by the court of criminal appeals in any manner provided by those rules. The rules must require that an attorney appointed as lead counsel

1 under this section not have been found by a federal or state court  
2 to have rendered ineffective assistance of counsel during the trial  
3 or appeal of any capital case, unless the conduct underlying the  
4 finding fails to accurately reflect the attorney's current ability  
5 to provide effective representation.

6 (g) An attorney appointed or employed as counsel under this  
7 article shall provide effective representation during the course of  
8 proceedings under this article.

9 SECTION 2. Subsections (a), (b), and (d), Section 2A,  
10 Article 11.071, Code of Criminal Procedure, are amended to read as  
11 follows:

12 (a) The state shall reimburse a county for compensation of  
13 counsel under Section 2 and payment of expenses under Section 3.  
14 The total amount of reimbursement to which a county is entitled  
15 under this section for attorney compensation for an application  
16 under this article may not exceed \$100,000 [~~\$25,000~~]. The total  
17 amount of reimbursement to which a county is entitled under this  
18 section for reasonable expenses incurred by an attorney appointed  
19 with respect to an application under this article may not exceed  
20 \$50,000. Compensation and expenses in excess of the \$150,000  
21 [~~\$25,000~~] reimbursement that may be provided by the state are the  
22 obligation of the county.

23 (b) A convicting court seeking reimbursement for a county  
24 shall certify to the comptroller of public accounts the amount of  
25 compensation that the county is entitled to receive under this  
26 section. The comptroller of public accounts shall issue a warrant  
27 to the county in the amount certified by the convicting court, not

1 to exceed a total amount of \$100,000 for attorney compensation and  
2 \$50,000 for expenses [~~\$25,000~~].

3 (d) The comptroller shall reimburse a county for the  
4 compensation and payment of expenses of an attorney appointed by  
5 the court of criminal appeals under prior law. A convicting court  
6 seeking reimbursement for a county as permitted by this subsection  
7 shall certify the amount the county is entitled to receive under  
8 this subsection for an application filed under this article, not to  
9 exceed a total amount of \$100,000 for attorney compensation and  
10 \$50,000 for expenses [~~\$25,000~~].

11 SECTION 3. Section 5(a), Article 11.071, Code of Criminal  
12 Procedure, is amended to read as follows:

13 (a) If a subsequent application for a writ of habeas corpus  
14 is filed after filing an initial application, a court may not  
15 consider the merits of or grant relief based on the subsequent  
16 application unless the court determines that considering the merits  
17 or granting relief is in the best interest of justice or the  
18 application contains sufficient specific facts establishing that:

19 (1) the current claims and issues have not been and  
20 could not have been presented previously in a timely initial  
21 application or in a previously considered application filed under  
22 this article or Article 11.07 because the factual or legal basis for  
23 the claim was unavailable on the date the applicant filed the  
24 previous application;

25 (2) by a preponderance of the evidence, but for a  
26 violation of the United States Constitution no rational juror could  
27 have found the applicant guilty beyond a reasonable doubt; [~~or~~]

1           (3) by clear and convincing evidence, but for a  
2 violation of the United States Constitution no rational juror would  
3 have answered in the state's favor one or more of the special issues  
4 that were submitted to the jury in the applicant's trial under  
5 Article 37.071 or 37.0711;

6           (4) by clear and convincing evidence, the current  
7 claims or issues were not raised previously in a timely initial  
8 application under this article because the applicant was not  
9 represented by competent counsel in filing the previous  
10 application; or

11           (5) by clear and convincing evidence, the counsel who  
12 prepared the initial application was subsequently found by the  
13 court of criminal appeals to be ineligible for appointments under  
14 rules adopted for appointment of attorneys as counsel under Section  
15 2(d).

16           SECTION 4. Section 6, Article 11.071, Code of Criminal  
17 Procedure, is amended by adding Subsection (b-1) to read as  
18 follows:

19           (b-1) If the convicting court receives notice that the  
20 requirements of Section 5(a) for consideration of a subsequent  
21 application have been met, the convicting court shall appoint  
22 counsel and provide for the compensation and reimbursement of  
23 expenses of the counsel as is provided by Sections 2A and 3,  
24 including compensation for time previously spent and reimbursement  
25 of expenses previously incurred and regardless of whether the  
26 subsequent application is ultimately dismissed.

27           SECTION 5. The change in law made by this Act applies to an

1 initial or subsequent application for a writ of habeas corpus filed  
2 on or after January 1, 2008. An application filed before January 1,  
3 2008, is covered by the law in effect when the application was  
4 filed, and the former law is continued in effect for that purpose.

5 SECTION 6. This Act takes effect September 1, 2007.